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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-------------------------|-------------|----------------------|---------------------|------------------|
| 10/684,034 | 10/14/2003 | Young Kook Cho | A412-JN | 3178 |
| 7590 | | 07/03/2006 | EXAMINER | |
| Young Kook Cho | | GEHMAN, BRYON P | | |
| 2292 Spin Drift Way | | ART UNIT | | |
| Lawrenceville, GA 30043 | | PAPER NUMBER | | |
| | | 3728 | | |

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/684,034

Applicant(s)

CHO, YOUNG KOOK

Examiner

Bryon P. Gehman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 and 26 September 2005.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5 and 12-14 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 3-5 and 12-14 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

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1. Applicant's election of the species of Figures 2-6 in the reply filed on September 2, 2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. The replacement drawing of Figure 1 was received on September 26, 2006. This drawing is acceptable.

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 3 and 12 are finally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of US patent 6,974,024. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim similar subject matter without clearly distinguishing one from the other. Claimed in the patent is a cap device alone

and in combination with a bottle, the cap device comprising a cap body (100), a funnel part (52) having an opening (52K) and integrated with the cap body, a cap cover (120), a valve member having a valve part and a shank (14) extending into the cap body through the opening, wherein the valve member seals the opening when the cap body is twisted onto a bottle, the valve member is disengaged and not sealing the opening when not, the shank (remainder of 5) is wedged into the opening and has a wedge shape as much as defined, and radial ribs.

5. Claims 3 and 12 are finally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of US patent 6,994,211. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim similar subject matter without clearly distinguishing one from the other. Claimed in the patent is a cap device alone and in combination with a bottle, the cap device comprising a cap body (100), a funnel part (52) having an opening (at 20) and integrated with the cap body, a cap cover (120), a valve member having a valve part and a shank (14) extending into the cap body through the opening, wherein the valve member seals the opening when the cap body is twisted onto a bottle, and the valve member is disengaged and not sealing the opening when not, the shank (remainder of 5) is wedged into the opening and has a wedge shape as much as defined, and radial ribs.

6. Claims 3-5 and 12-14 are finally provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3, 4 and 8 of copending Application No. 10/995700. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim similar subject matter without clearly distinguishing one from the other. Claimed in the other application is a cap device alone and in combination with a bottle, the cap device comprising a cap body (100), a funnel part (52) having an opening (at 20) and integrated with the cap body, a cap cover (120), a valve member having a valve part and a shank (14) extending into the cap body through the opening, wherein the valve member seals the opening when the cap body is twisted onto a bottle, and the valve member is disengaged and not sealing the opening when not, the shank (remainder of 5) is wedged into the opening and has a wedge shape as much as defined, and radial ribs.

As to claims 4-5 and 13-14, Application No. 10/995700 claims a venting tube in the cap device.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Applicant's arguments filed September 2, 2005, or lack thereof with respect to the double patenting rejections, have been fully considered and are not persuasive. Two of the applications originally cited as grounds for double patenting have issued, and appropriate amendment of the grounds of rejection have been made in view of these

changes. The allowed claims of patents 6,974,024 and 6,994,211 are still considered as providing grounds for double patenting in the instant application in view of the overlapping subject matter. The pending claims of application 10/995,700 are also sufficient in overlapping structure so as to render their continued use as grounds of provisional double patenting.

8. The issuance of two of the applications as patents, commonly owned by applicant and previously employed under provisional double patenting, necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571)

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272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Bryon P. Gehman', with a stylized, flowing script.

Bryon P. Gehman
Primary Examiner
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BPG